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REMARKS

By the present amendment, Applicant has cancelled Claims 1-40, and added Claims 41-46.

Claims 41-46 remain pending in the present application. Claim 41 is an independent claim.

Applicant appreciates the courtesies extended to Applicant's representative during the personal

interview held October 10, 2003. The present response summarizes the substance of the interview. At

the interview, proposed new Claims 41-46 were presented for discussion. Proposed independent Claim

41 set forth an oral composition for oral administration comprising an extract of *Heliopsis longipes* root

in an amount of about 0.5 to about 1000 mg/ml and an oral carrier. The oral composition was set forth

as being in a form selected from the group consisting of a powder, a gel, a paste, a tablet, a capsule, a gum,

a lozenge, an aerosol, and a liquid. Dependent Claims 42-46 set forth specific formulations of the oral

composition. Arguments were advanced that the compositions defined by the proposed claims were

patentably distinguishable over Romero et al., the applied prior art of record. Applicant's representative

pointed out that Romero et al. discloses the antibacterial, insecticidal, and toxicological effects of the total

alcoholic extract of Heliopsis longipes and not a composition which includes the extract and an oral carrier.

Furthermore, the studies disclosed in Romero et al. do not teach or suggest oral administration of the

extract for Applicant's disclosed purposes. The Examiners agreed that Romero et al. does not teach a

composition which includes the extract of *Heliopsis longipes* and an oral carrier. The Examiners pointed

out, however, that Romero et al. does teach a composition which includes the extract in a solution. As

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such, the Examiners suggested amending the claims to further define the liquid form of the inventive

composition by adding the terminology "a glycerine and sorbitol containing" before "liquid" in the proposed

independent claim. The Examiners also suggested additional amendments to the proposed claims to further

distinguish the present invention from the prior art. Specifically, the Examiners suggested including the

acceptable percentage by weight of the extract in relation to the composition and to add the limitation that

the gum form of the composition is chewable. The Examiners further suggested removing the term "carrier"

from each of the dependent claims and removing all trademark names, abbreviations, and terms in

parenthesis. The Examiners held that while a new search would have to be conducted to determine the

patentability of new independent Claim 41, the proposed claims, if amended to include the limitations

suggested by the Examiner, would appear to be allowable.

Claims 30-40 were held withdrawn from consideration by the Examiner as being directed to a non-

elected invention. Accordingly, it is proposed herein that the instant claims be canceled. However, it

should be noted that under the provisions of 35 U.S.C. § 121 Applicant reserves the right to file a divisional

application directed to the non-elected subject matter.

In the recent Office Action the Examiner rejected Claims 1-29 under 35 U.S.C. § 112, second

paragraph, as being indefinite. Claim 26 was objected to under 37 CFR 1.75 (c), as being of improper

dependent form for failing to further limit the subject matter of the previous claim. Claims 1-29 were

rejected under 35 U.S.C. § 102(b) as being anticipated by Romero et al..

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The cancellation of claims 1-40 and the introduction of claims 41-46 by the present amendment

should serve to obviate the rejection based on indefiniteness and the prior art grounds of rejection of

record. The newly introduced terms are devoid of the terms "desirable sensations", "relative to the

composition", "a wet component and a dry component", a "wet component and a dry component", and

"and any other...to the oral cavity." Also, the claims have been amended in accordance with the

Examiners' suggestion to specify that the composition can take the form of a powder or a paste.

Consequently, Applicant respectfully submits that newly presented Claims 41-46 meet the specific

requirements of 35 U.S.C. § 112, second paragraph.

Regarding the prior art grounds of rejection, Applicant will advance arguments hereinbelow to

illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and

applied prior art. Reconsideration is respectfully requested.

Claims 41-46 have been newly introduced to more particularly define Applicant's invention in light

of the prior art of record. New independent Claim 41 defines an herbal composition for oral administration

comprising an extract of Heliopsis longipes root in an amount of about 0.01% - 10% by weight of the

composition and an oral carrier. Claim 41 further sets forth that the composition must provide an amount

of about .5 mg/ml-1000 mg/ml of the extract per effective dosage and be in a form selected from the group

consisting of a powder, a gel, a paste, a tablet, a capsule, a chewable gum, a lozenge, an aerosol, and a

liquid which contains at least one flavoring agent. New dependent Claim 42 sets forth that the composition

includes about 1%-2% by weight of the Heliopsis longipes root extract and the liquid includes about 48%

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by weight distilled water, about 20% by weight glycerine, about 30% by weight sorbitol powder, about

0.1% by weight potassium sorbate, about 0.1% by weight sodium benzoate, and about 0.2% by weight

citric acid powder. New dependent Claim 43 sets forth that the composition includes about 1%-2% by

weight of the Heliopsis longipes root extract and the liquid carrier includes about 11% by weight distilled

water, about 11% by weight glycerine, about 76% by weight sorbitol solution, and about 0.3%-0.5% by

weight peppermint flavor. New dependent Claim 44 sets forth that the composition includes about 3%

by weight of the Heliopsis longipes root extract and the gum includes about 28% by weight gum base,

about 17% by weight polysorbate, about 0.25% by weight acesulfame K, about 0.5% by weight glycerine,

about 47% by weight sorbitol, about 2% by weight mannitol, and about 2% by weight peppermint

flavoring. New dependent Claim 45 sets forth that the composition includes about 3% by weight of the

Heliopsis longipes root extract and the gum includes about 50% by weight gum base, about 16% by

weight polysorbate, about 0.25% by weight acesulfame K, about 1.0% by weight glycerine, about 24.00%

by weight sorbitol, about 2% by weight mannitol, and about 3% by weight peppermint flavoring. New

dependent Claim 46 sets forth that the composition includes about 1-2% by weight of the *Heliopsis* 

longipes root extract and the tablet includes about 98% by weight sorbitol powder, about 0.4%-0.5% by

weight peppermint flavoring, and about 1.0% by weight magnesium stearate.

Basis for the newly presented claims and particularly the amounts of the extract and each ingredient

in the composition as stated in the claims can be found on page 7, line 12, and Tables 1-5 on pages 19-30

of Applicant's original specification. Basis for the particular forms of the composition can be found on page

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15, lines 1-3. Basis for "a flavoring agent" in the composition can be found on page 15, line 10. No new

matter is involved by the presentation of new Claims 41-46 since the limitations set forth by the instant

claims find sufficient support in Applicant's disclosure.

Applicant notes that Romero et al. discloses an alcoholic extract of *Heliopsis longipes*. However,

Romero et al. discloses the antibacterial, insecticidal and toxicological effects of the total alcoholic extract

of Heliopsis longipes. Applicant respectfully points out that Romero et al. does not teach an herbal

composition which includes an extract of Heliopsis longipes and an oral carrier as presently claimed. In

fact, the studies described in Romero et al. do not even suggest oral administration of the extract of

Heliopsis longipes. Consequently, Applicant contends that there appears no disclosure or suggestion in

the prior art that would enable one of ordinary skill in the art to arrive at the presently claimed composition.

Applicant has considered, however, the suggestions given by the Examiner during the interview held on

October 10, 2003 regarding amendment of the proposed new claims. Applicants believe that the

terminology "glycerine and sorbitol containing" suggested by the Examiner to further define the liquid forms

of the claimed composition so as to further distinguish the present invention from Romero et al. is

unnecessarily limiting. Applicant has instead specified that the liquid forms of the claimed composition

contain "flavoring agents", as disclosed on page 15, line 10 of the specification, as such a composition is

clearly not disclosed in Romero et al.. Applicant has amended the claims in all other respects, in

accordance with the Examiners' suggestions.

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The claims in this application have been revised to more particularly define applicants' unique construction in view of the prior art of record. Reconsideration of the claims in light of the amendments and for the following reasons is respectfully requested.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

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